

## ESTATE TAX

### STATUTORY PROVISION<sup>2</sup>

Title 30, Delaware Code, Chapter 15.

### COLLECTION/ADMINISTRATIVE AGENCY

The Department of Finance, Division of Revenue administers the estate tax.

### GENERAL LIABILITY

The State of Delaware imposes an estate tax on the value of an individual's estate at the time of death.

#### Resident Decedents

The estate tax of every resident decedent is equal to the excess, if any, of the amount of the credit allowed for state death taxes on the federal estate tax return, over the amount of the inheritance taxes paid to Delaware and any other state, or the District of Columbia. In other words, the Delaware estate tax is calculated as follows:

Amount of Credit Allowed on line 15 federal estate tax return	— (minus)	Tax Paid to Delaware (if any) and any other state	*	= (equals)	Delaware Estate Tax Liability
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A Delaware estate tax return must be filed if the decedent is required to file a federal estate tax return. If the value of an estate does not meet the threshold for filing a federal estate tax return (see table below), then no federal or Delaware estate tax is imposed.<sup>3</sup>

Delaware's estate tax is sometimes referred to as a "pick-up" tax or a "gap" tax. It "picks up" any remaining Federal Credit allowed for State death taxes after other inheritance taxes are paid.

Delaware estate tax returns must be filed on or before the due date for the federal estate tax return. A special lien is imposed upon the gross estate of a resident until such time as the estate tax has been paid.

<b>Federal Estate Tax Thresholds And Repeal Dates</b>	
<u>Size of Estate</u>	<u>Effective</u>
\$675,000	2000
\$1.0 million	2002
\$1.5 million	2004
\$2.0 million	2006
<i>State Credit Repeal</i>	2005
\$3.5 million	2009
<i>Federal Repeal</i>	2010

<sup>2</sup>Inheritance Tax (repealed as of January 1, 1999).

<sup>3</sup>The Economic Growth and Tax Relief Reconciliation Act of 2001 implemented a phase-out of the Federal Estate Tax by calendar year 2010 and the State Credit by calendar year 2005. Under current federal law, however, the Federal Estate Tax will be reinstated in 2011 as it existed prior to the Economic Growth and Tax Relief Reconciliation Act of 2001.

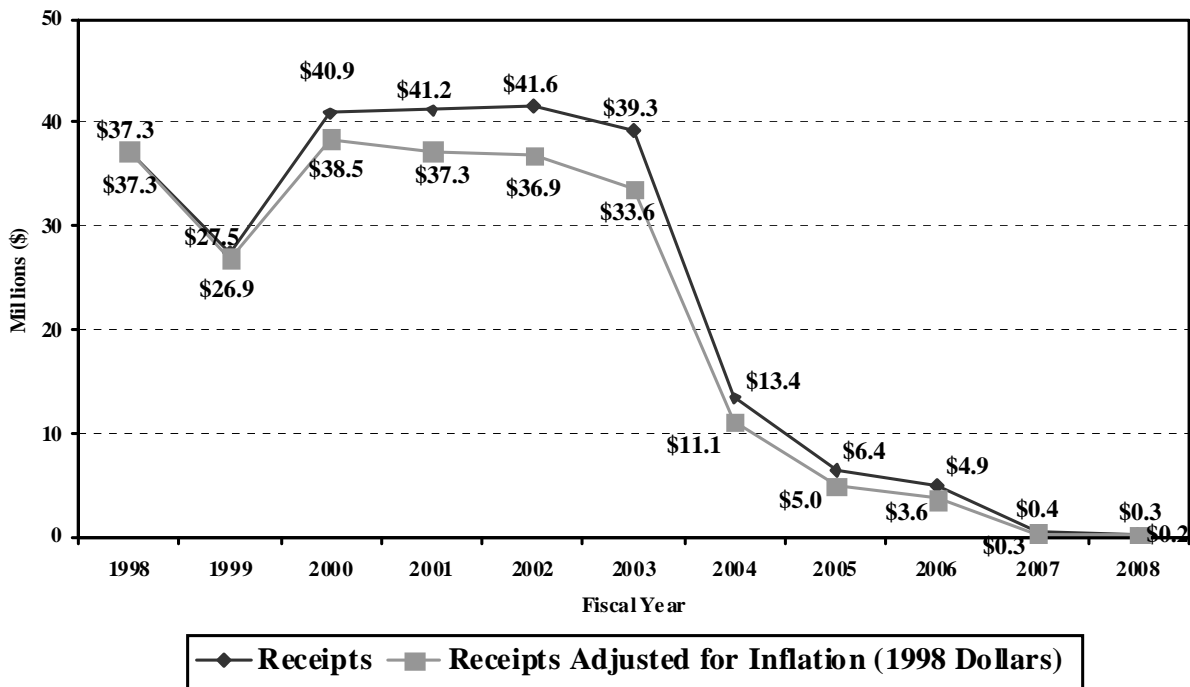
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### Non-Resident Decedents

Effective January 1, 1999, the estate of every non-resident is taxed based on the pro-rated share of their taxable estate attributable to real and tangible personal property in Delaware at the time of their death. A special lien is imposed upon the real and tangible personal property of a non-resident until such time as the estate tax has been paid.

### TAX RECEIPTS

#### Inheritance and Estate Taxes



Figures include inheritance tax receipts. The inheritance tax was repealed as of January 1, 1999.

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### **LEGISLATIVE HISTORY**

<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
7/1/98	1/1/99	Repealed the inheritance tax. Revised the estate tax to conform to the repeal of the inheritance tax by imposing an estate tax on the estates of resident and nonresident persons who have estates large enough to be required to file a federal estate tax return. Allowed for a special lien upon property until the estate tax is paid (71 Del. Laws c 353, HB 771).
7/1/99	1/1/99	Provided that, for resident decedents, intangible property is considered Delaware property for estate tax purposes (72 Del. Laws 176; SB 216).
6/23/00	6/23/00	Provided a means to clear title to jointly owned real estate when a formal probate estate is not required (72 Del. Laws 342; SB 314).
6/07/01	1/1/02	Federal tax cut reduced state credit by 25% in 2002, 50% in 2003, 75% in 2004, and implements a complete phase-out in CY 2005. Estate exemption increased to \$1 million in 2002, \$1.5 million in 2004, \$2 million in 2006, and \$3.5 million in 2009. Federal tax rates are reduced through 2010, at which time there will be a complete elimination of the estate tax (HR 1836, Economic Growth and Tax Relief Reconciliation Act of 2001).
7/12/05	7/12/05	Eliminated: (1) the requirement to file a Delaware estate tax return for dates on which the federal estate tax law does not allow a credit for state death tax (currently 2005 through 2010); (2) the special lien on the gross estate tax for decedents dying on a date on which the federal estate tax does not allow credit for state death taxes paid; and (3) the requirement of filing an affidavit, that no estate tax is required, with the Register of Wills for decedents dying on a date on which the federal estate tax does not allow credit for state death taxes paid (75 Del. Laws c. 198; SB 227).
7/10/06	1/1/07	Decreased the rate of interest assessed on overdue tax liabilities and paid on outstanding tax refunds from 1% to 0.5% and increased the penalties assessed on overdue liabilities from 0.5% to 1% (75 Del. Laws c 411; HB 397).

### **FILING PROCEDURES**

The estate tax return is due within nine (9) months after the date of decedent's death. The tax is due on or before the date fixed for filing the return determined without regard to any extension of time for the filing of the return. The Division of Revenue may, upon written request, extend the time for filing the return and may extend time for payment of the tax for a reasonable period from the due date. If the time for filing the federal estate tax return is extended, the time for filing the Delaware return

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shall be extended automatically for a like period, provided that an executed copy of such extension grant is furnished to the Division of Revenue before or with the filing of the return. During years in which the federal estate tax law does not permit a credit for state death tax, all filing requirements shall be waived.

### **PAYMENT DATES**

Payments must be made no later than 9 months after the death of the decedent.

### **PENALTIES AND INTEREST**

The law requires payment of interest at the rate of 1% per month (or fraction thereof) for delinquent taxes, assessed from the due date to date of payment. An additional penalty of 5% per month, to a maximum of 50% of the amount of tax due, is also available. For tax periods beginning on or after January 1, 2007 the rate of interest assessed will be reduced from 1% to 1/2% per month.

Failure to pay the amount of tax due will result in a failure-to-pay penalty of 1/2% per month, up to a maximum of 25% of the amount of tax unpaid. For tax periods beginning on or after January 1, 2007 the rate of penalty assessed will increase from 1/2 % to 1% per month.

The Division of Revenue may apply a negligence penalty of 20% of the amount of the deficiency, or a penalty of 40% if such deficiency is due to a substantial understatement of the tax. A fraud penalty of 75% where any part of the deficiency is due to fraud, may also be imposed.